



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Office of the Secretary of State

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 14-05-029 ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____ ; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).	<input type="checkbox"/> Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
Notaries in the Uniform Real Property Electronic Recording Standards

Hearing location(s):
Washington State Archives Building
1129 Washington St.
Olympia, WA
(360) 586-1492

Date: May 27, 2014 Time: 11:00 a.m.

Submit written comments to:
Name: Katie Blinn
Address: P.O. Box 40220
Olympia, WA 98504-0220
e-mail katie.blinn@sos.wa.gov
fax (360)586-5629 by (date) May 27, 2014

Assistance for persons with disabilities: Contact
Katie Blinn by May 23, 2014
TTY () _____ or (360) 902-4168

Date of intended adoption: May 28, 2014
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of the proposed rule is to allow electronically recorded documents that require notarization to be notarized by any authorized notary, and to eliminate the requirement that the notary be appointed by the Washington State Department of Licensing.

Reasons supporting proposal: The rule changes allow electronically recorded documents that must be notarized to be notarized by any authorized notary, and eliminate the requirement that the notary be appointed by the Washington State Department of Licensing. This is consistent with Chapter 42.44 RCW.

Statutory authority for adoption: RCW 65.24.040

Statute being implemented: RCW 65.24.040

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: _____

DATE
April 4, 2014

NAME (type or print)
Ken Raske

SIGNATURE

TITLE
Assistant Secretary of State

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: April 04, 2014

TIME: 4:24 PM

WSR 14-09-014

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Office of the Secretary of State

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Katie Blinn	P.O. Box 40220, Olympia, WA 98504-0220	(360) 902-4168
Implementation....Julie Blecha	P.O. Box 40238, Olympia, WA 98504-0238	(360) 586-4902
Enforcement..... Julie Blecha	P.O. Box 40238, Olympia, WA 98504-0238	(360) 586-4902

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

Not applicable.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain:

Not applicable

WAC 434-661-020 Definitions. For the purpose of this chapter:

(1) "Delivery package" means a document, group of documents, related or unrelated, bundled into a single entity for electronic transfer.

(2) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium, is retrievable in perceivable form, and is eligible to be recorded in the land records maintained by the county recording officer.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Electronic document" means a document that is received or sent by the recording officer in an electronic form.

(5) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(6) "Electronic notarization" means a notarial act performed in accordance with chapter 42.44 RCW and chapter 308-30 WAC by a notary public(~~(, appointed by the Washington state department of licensing,)~~) who provides notarial acts using electronic interface.

(7) "Electronic recording standards commission" or "eRecording standards commission" or "ERSC" means the body of stakeholders appointed by the secretary of state to review electronic recording standards and make recommendations to the secretary in accordance with RCW 65.24.040.

(8) "eRecording" means electronic recording of real property documents.

(9) "Metadata" means data describing other data to facilitate the understanding, use, and management of that data.

(10) "Open architecture" means computer architecture or software architecture that employs specifications that are open to the public to allow for adding, upgrading and exchange of components produced by a broad range of manufacturers.

(11) "PDF (portable document format)" means the file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or world wide web presentation.

(12) "Recording" means making a matter of record in the office of the recording officer in accordance with RCW 65.04.030.

(13) "Recording officer" means the county auditor or other official county recording officer.

(14) "TIFF" (tagged image file format) means the variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels.

(15) "URPERA (Uniform Real Property Electronic Recording Act)" means the body of recommended legislation released in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recording officers to accept electronic documents for recording in accordance with estab-

lished standards. Washington state adopted a modified version of UR-PERA in 2008 (chapter 65.24 RCW).

(16) "Washington state archives" means the office of the secretary of state, division of archives and records management.

(17) "Web portal (gateway)" means a site that functions as a point of access to information or services on the world wide web.

(18) "XML (extensible markup language)" means an extensible document language for specifying document content. XML is not a predefined markup language but a metalanguage (a language for describing other languages) allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents.

WAC 434-661-030 Washington real property electronic recording standards. (1) Technical standards and implementation guidelines.

(a) Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of this rule, and listed below:

- (i) PRIA Request Version 2.4.2, August 2007;
- (ii) PRIA Response Version 2.4.2, August 2007;
- (iii) Document Version 2.4.1, October 2007;
- (iv) Notary Version 2.4.1, October 2007;
- (v) eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007;
- (vi) URPERA Enactment and eRecording Standards Implementation Guide, December 2005.

These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>.

(b) eRecording shall be offered and conducted in accordance with the models of submission described in the URPERA Enactment and eRecording Standards Implementation Guide, Section 2.3, eRecording Models.

(c) Each recording officer who accepts documents for eRecording shall provide open architecture for reception of electronic documents. All reception software, including web portals, must support PRIA eRecording SML Implementation Guide for Version 2.4.1 standards.

(2) Web portals.

(a) The world wide web will be the most common delivery medium for electronic documents.

(b) A document delivered over the web should provide a minimum amount of information in the delivery package sufficient to identify and authenticate the sender to the recording officer, while also itemizing the contents of the package.

(c) Payment processing, if supplied at the portal, shall comply with the 2012 NACHA Operating Rules & Guidelines, which is hereby incorporated by reference and made a part of this rule. This publication is available from NACHA: The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, VA 20171, and at <http://www.nacha.org/>. The recording officer and portal provider shall determine the portal's payment processing capabilities, and each recording officer shall designate approved methods of payment, which may include credit cards, ACH (automated clearing house), escrow accounts, electronic checks, or other methods.

(3) Business rules. Recording officers shall establish and publish business rules that govern how eRecording will be conducted. The business rules may be in electronic or hard copy format and may appear on a portal or the recording officer web site. The transmitting parties' electronic acknowledgment of acceptance of the terms of the business rules is acceptable. The business rules must cover the following items:

- (a) Memorandum of understanding or contract;
- (b) Defined technical specifications;
- (c) Document formatting and indexing specifications;

- (d) Hours of operations and processing schedules;
- (e) Payment options;
- (f) Termination terms;
- (g) Document rejection rights;
- (h) Statement that any amendments and/or alterations to the business rules will be published with adequate notice before taking effect;
- (i) Statement clarifying the liability of the recording offices.

(4) **Security.**

(a) All electronic documents must be secured in such a way that both the transmitting and receiving parties are assured of each other's identity and that no unauthorized party can view or alter the electronic document during transmission, processing, and delivery. If followed through the entire electronic document process of execution through recording, the security measures identified in chapter 6 of the eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007, satisfy this requirement.

(b) Each recording officer who elects to accept electronic real property documents for recordation shall implement reasonable measures such that each electronic document accepted for recordation is protected from alteration and unauthorized access.

(5) **Electronic signatures.** Recording officers are only required to accept electronic signatures that they have the technology to support. Recording officers have no responsibility to authenticate electronic signatures embedded within the body of the document.

(6) **Notarizations.** Pursuant to chapter 65.24 RCW, notarizations must:

(a) Be performed by a notary public who has been appointed by the Washington state department of licensing, or a person authorized by the laws of another jurisdiction outside the state of Washington, in accordance with chapter ~~((43.44))~~ 42.44 RCW; and

(b) Comply with all applicable requirements for performing a notarial act as found in chapter 42.44 RCW and chapter 308-30 WAC, as amended from time to time, except that in the case of ~~((an electronic))~~ notarizations performed electronically, an impression of the official seal or stamp is not required.

Recording officers have no responsibility for verifying or authenticating notary signatures and acknowledgments.

(7) **File formats for eRecording.** The electronic recording standards commission recommends that electronic recordings be converted to (if necessary) and preserved as image files along with their associated metadata. If submissions are accepted in XHTML (extensible hypertext markup language) format, they shall be converted to a digital image until the viability of preserving these eRecordings in their native format has been demonstrated. Document images should be submitted as defined in WAC 434-663-305 and meet all state requirements for recorded instruments as defined in RCW 65.04.045.

(8) **Records retention and preservation.** Recording officers must not destroy public records, including electronic records, without the approval of the local records committee, in accordance with RCW 40.14.070.

Recording officers must retain electronic public records in electronic format such that the records remain usable, searchable, retrievable, and authentic for the length of the designated retention period in accordance with WAC 434-662-040.

The local records committee has approved the local government common records retention schedule (CORE) and the county auditor re-

cords retention schedule authorizing the minimum retention periods for recording officer records, and designating those records with enduring value as "archival."

Recording officers may transfer public records designated as "archival," including electronic records, to Washington state archives for preservation and for facilitating public access to the records.

(9) **Payment of recording fees.** Electronic payment of recording fees and excise tax, where applicable, shall be collected by the county agency responsible for such as prescribed in accordance with Washington state law and accepted industry standards without incurring unreasonable electronic processing fees.